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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20024

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In the Matter of

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Implementation of the Subscriber Carrier  
Selection Changes Provisions of  
the Telecommunications Act of 1996

CC Docket No. 94-129

Policies and Rules Concerning  
Unauthorized Changes of Consumers'  
Long Distance Carriers

REPLY COMMENTS OF TELTRUST, INC.  
ON PETITIONS FOR RECONSIDERATION AND CLARIFICATION

Teltrust, Inc., ("Teltrust") through its attorneys, hereby submits its Reply Comments in response to the Petitions for Reconsideration and Clarification filed by several parties in connection with the FCC's *Second Report and Order*<sup>1</sup> in the captioned proceeding and the Federal Communications Commission's Public Notice herein.<sup>2</sup> Teltrust is a diversified telecommunications company providing customized support services to the telecommunications industry. Among other services, Teltrust supplies telecommunications carriers and other commercial entities with live and automated third party verification services ("TPV"), including TPV used by carriers to prevent slamming.

<sup>1</sup> Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, *Second Report and Order*, 14 FCC Rcd 1508 (1998) ("*Second Report and Order*").

<sup>2</sup> *Public Notice*, 64 Fed. Reg. 30520, June 8, 1999.

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## **I. Introduction**

In these Reply Comments, Teltrust focuses on four issues raised in petitions for reconsideration or clarification of the Commission's slamming rules: (1) allowing the removal of a preferred carrier ("PC") freeze after verification of the consumer's request for removal in accordance with the FCC's rules; (2) applying these verification requirements to initial carrier selections; (3) requiring executing local exchange carriers ("LECs") to verify the customer's choice of a long distance provider when the provider is affiliated with that LEC; and (4) maintaining the prohibition on LECs performing duplicative verification.

## **II. The FCC Should Allow Preferred Carrier Freezes To Be Removed with Verification of the Customer's Request**

In their petitions, AT&T Corp. ("AT&T") and Excel Telecommunications, Inc. ("Excel") asked the FCC to allow a "PC" freeze to be lifted when the carrier that has sold the customer on changing carriers submits to the LEC an FCC-approved verification of the consumer's request to lift the freeze.<sup>3</sup> Several commentators support AT&T's and Excel's requests as consistent with promoting full-fledged, fair local competition.<sup>4</sup>

A number of incumbent LECs oppose these requests to allow other carriers to lift PC freezes on behalf of their new customers, even with verification. Some ILECs claim that this

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<sup>3</sup> AT&T, Petition for Partial Reconsideration or, in the Alternative, for Clarification, at 6-7; Excel, Petition for Clarification and Reconsideration at 15-19. All petitions cited in these Reply Comments were filed on March 18, 1999.

<sup>4</sup> Comments of MCI Worldcom, Inc. ("MCI Worldcom") at 11-15; Qwest Communications Corp. ("Qwest") at 12-14.

would destroy the efficacy of PC protection programs.<sup>5</sup> Other ILECs contend that allowing this change would disserve consumers and the FCC's stated goal of eliminating slamming.<sup>6</sup>

The FCC should allow for the removal of the PC freeze after verification of the customer's request for removal. As AT&T correctly observed, if the FCC deemed verification to be sufficient confirmation for a change of carriers, it should also consider verification to be sufficient to confirm removal of a PC freeze.<sup>7</sup>

Indeed, application of the same verification procedures to the removal of the PC freeze as to its installation would promote certainty and uniformity within the slamming rules and procedures. For example, the FCC's PC freeze rules permit three alternative verification options used for PC freeze or PC change verification – independent TPV, signed Letter of Agency (“LOA”), or electronic verification.<sup>8</sup> However, for any removal of a PC freeze, the rules require ILECs to offer customers the option of removing a freeze by a written and signed authorization or by an oral authorization obtained in a three-way conference call with the new carrier, the LEC and the customer.<sup>9</sup> It would be less confusing for consumers and carriers alike if the FCC applied the uniform procedures to installation and removal of PC freezes.

In its most recent order addressing this issue, the FCC recognized the value of consistency in the application of its verification rules, stating:

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<sup>5</sup> Comments of SBC Communications, Inc. (“SBC”) at 7-10; Ameritech Operating Companies (“Ameritech”) at 2-4.

<sup>6</sup> Comments of Bell Atlantic at 2-3; US West Communications, Inc. (“US West”) at 9-11.

<sup>7</sup> AT&T Comments at 7-9.

<sup>8</sup> 47 C.F.R. § 64.1190(d)(2).

<sup>9</sup> 47 C.F.R. § 64.1190(e).

We adopt our proposal to extend our carrier change verification procedures to preferred carrier freeze solicitations and note that this proposal was supported by a wide range of carriers, state commissions, and consumer organizations. By requiring LECs that administer preferred carrier freeze programs to verify a subscriber's request to place a freeze, we expect to reduce customer confusion about preferred carrier freezes and to prevent fraud in their implementation.... By adopting the same verification procedures for both carrier changes and preferred carrier freezes, we expect that the process of implementing preferred carrier freezes will be less confusing for subscribers and administratively more efficient for carriers.

*Second Report and Order* at 1583-84.<sup>10</sup> This same rationale warrants the application of the same verification options to removal of PC freezes as already apply to freezes and changes. The FCC already concluded that its verification measures afford consumers protection against slamming.<sup>11</sup> Adopting the full menu of tried-and-true verification measures to the lifting of a freeze will provide a stable and standardized process that protects both consumers and carriers.

### **III. The FCC Should Extend its Verification Requirements to Initial Carrier Selections**

While the new verification rules are generally comprehensive, there are circumstances where they do not apply. AT&T, for instance, has asked the FCC to extend its verification rules to new carrier selections.<sup>12</sup> Incumbent LECs oppose the application of verification procedures to

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<sup>10</sup> See also *Second Report and Order* at 1549-50 ("We also find that uniform application of the verification requirements to all in-bound and out-bound calls will decrease consumer confusion about what to expect when making changes to their telecommunications services.").

<sup>11</sup> *Second Report and Order* at 1554 ("Furthermore, the verification rules, as we have modified them, will provide consumers with protection against slamming while still providing them with the ability to change carriers without unnecessary burdens.").

<sup>12</sup> AT&T Petition at 23-26.

orders for the establishment of new services or lines.<sup>13</sup> In particular, Ameritech argues that section 258 authorizes the FCC to prescribe methods only for a change in a subscriber's selection of carriers and that the Administrative Procedures Act<sup>14</sup> requires notice and comment on an issue before imposing a new regulation or requirement.<sup>15</sup>

Teltrust supports the request to extend verification to consumers' initial carrier selections. There are significant public policy reasons for requiring the ILECs to verify initial carrier selections. First, such a requirement would significantly assist in ensuring that there is no anti-competitive behavior by the ILECs who install orders on behalf of themselves and their competitors. Verification of initial selections is consistent with the FCC's goal of confirming the customer's authorization before execution of the selection of carriers. Indeed, a sizable portion of U.S. households move in the course of a single year and contact ILECs for connection of telephone service.<sup>16</sup> The FCC should have the same degree of protection against potential abuse in this instance as its rules provide in related contexts.

Second, while section 258 speaks in terms of carrier changes, the FCC possesses legal authority under the general provisions of the Act to take the measures necessary to protect the public interest and to promote competition among carriers. Indeed, the Supreme Court recently

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<sup>13</sup> Comments of Ameritech at 4-8; GTE Service Corp. ("GTE") 4-5; Bell Atlantic at 3; Sprint Corp. ("Sprint") at 8.

<sup>14</sup> 5 U.S.C. § 553.

<sup>15</sup> Comments of Ameritech at 4-8.

<sup>16</sup> According to the U.S. Census Bureau, approximately 16.5 percent of the American population, more than 43 million Americans, move every year. See U.S. Census Bureau, *Geographical Mobility of People One Year Old and Older, by Sex, Between March 1996 and March 1997*, Current Population Survey (March 1997) <<http://www.bls.census.gov/cps/pub/1997/mobility.htm>>.

articulated an expansive view of the FCC's authority to take all actions necessary to establish and promote local competition.<sup>17</sup>

Finally, it is settled law that petitions for reconsideration and the FCC's public notice requesting comments provide the necessary administrative notice of a possible Commission action.<sup>18</sup> Any suggestions to the contrary are without merit.

Teltrust urges the FCC to apply the same set of three alternative verification measures for initial carrier selections as for carrier changes. Consistency in the requirements at all stages of customer contact would minimize confusion. Moreover, these measures would ensure that carriers confirm the customer's choice of carriers by a method that is capable of later scrutiny.

#### **IV. The FCC Should Require ILECs to Verify the Customer's Selection of an Affiliated Toll Carrier**

Excel, RCN Telecom Services, Inc. ("RCN") and Media One Group each request that the FCC clarify that if a customer chooses an ILEC-affiliated carrier for their local toll or interexchange toll service provider, the ILEC must use specified FCC procedures to verify the toll service order.<sup>19</sup> Other commenters support this request.<sup>20</sup>

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<sup>17</sup> *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999). The Court stated: "We think that the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the provisions of this Act, which include §§ 251 and 252, added by the Telecommunications Act of 1996." *Id.* at 730. The Court continued: "...But the question in this case is not whether the Federal Government has taken the regulation of local telecommunications competition away from the States. With regard to the matters addressed by the 1996 Act, it unquestionably has...." *Id.* at 730, n.6.

<sup>18</sup> *Petroleum Comm., Inc. v. FCC*, 22 F.3d 1164 (1994); *see also* Amendment of Part 22 To Provide For Filing and Processing of Applications for Unserved Areas in the Cellular Service, *Further Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 2109 (1997).

<sup>19</sup> Excel Petition at 5-6; RCN, Petition for Clarification and Reconsideration at 7; Media One, Petition for Reconsideration at 2-4.

In this case, the ILEC is acting both as the submitting and the executing carrier for verification purposes. It is consistent with section 258 to require the ILEC, as submitting carrier, to verify the consumer's selection of any long distance carrier, including its own affiliate. Further, at least with respect to Regional Bell Operating Company ("RBOC" or "BOC") interexchange affiliates, the ILEC has not previously provided interLATA service. Its initiation of interLATA service to customers would be a change of carriers from the previous interLATA service provider, and thus should fall within the scope of section 258.

SBC opposed these arguments, stating that TPV and retention of LOAs are costly procedures and that it is unnecessary to impose them without any demonstrated problem of customers calling an ILEC to order service, as there is with carrier changes.<sup>21</sup> This is not surprising, as no BOC-affiliated ILEC has yet received interLATA services authority. There is no operating history to know whether problems will arise from combined BOC local and interLATA competition. It is certainly not proof that no problem will arise in the wholly new market dynamic of BOC entry into the interLATA interexchange market.<sup>22</sup> As for the costs

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<sup>20</sup> Comments of MCI Worldcom at 21-22.

<sup>21</sup> Comments of SBC at 11-12.

<sup>22</sup> The FCC has noted that incentive and ability to discriminate alone is sufficient to maintain a bright line non-structural safeguard. For example, in the *CMRS Safeguard Order*, the FCC stated:

Anticompetitive interconnection practices, particularly discriminatory behavior, pose a substantial threat to full and fair competition in the CMRS marketplace, and all LECs, not just the BOCs, have the ability and incentive to engage in anticompetitive behavior. Indeed, the increased competition in the CMRS market and the possibility that CMRS in the future may substitute for wireline local loops may actually increase LECs' incentive to discriminate against unaffiliated CMRS providers....Such mechanisms [non-accounting safeguards

continued...

associated with verification procedures, the FCC already has concluded that the costs are outweighed by their public benefit.

Requiring verification of initial carrier selections also would be consistent with the FCC's Non-Accounting Safeguards Order interpreting Section 272, which requires BOCs to ensure that affiliated carriers are not treated more favorably than nonaffiliated carriers.<sup>23</sup> The FCC found that Section 272 restricts the ability of a BOC to provide facilities, services, or information concerning its provision of exchange access to its affiliate unless it makes such facilities, services or information available to other providers of interLATA services in that market at the same terms and conditions.<sup>24</sup> Requiring verification of an affiliated inter-company order for services is entirely consistent with other Section 272 non-structural safeguard rules.

**V. The FCC Should Continue To Prohibit the ILECs from Performing Duplicative Verification Procedures**

The FCC correctly prohibited LECs from conducting their own verification procedures beyond those specified by the FCC before implementing customers' carrier selections. The

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and price cap regulations] do not, however, eliminate the possibility of interconnection discrimination. In this Order, we therefore strike a new balance by replacing Section 22.903 as it currently exists with a less restrictive separation requirement. Although the new rules will be substantially less restrictive than Section 22.903, they will apply to all LECs, except as described in section V.C., below, not just BOCs, and will apply to all types of broadband CMRS rather than just cellular.

Amendment of the Commission's Rules To Establish Competitive Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, *Report and Order*, 12 FCC Rcd 15668, 15692 (1997).

<sup>23</sup> Implementation of the Non-Accounting Safeguards of Sections 271 and 272, *Notice of Proposed Rulemaking*, 11 FCC Rcd 18877 (1996).

<sup>24</sup> *Id.* at 18944-45.



National Telephone Cooperative Association and a coalition of Rural LECs asked the FCC to allow them to continue additional verification measures.<sup>25</sup> Several commenters opposed these requests.<sup>26</sup>

There is no need for redundant verification by ILECs. Its only purpose appears to be to provide the ILEC with another opportunity to convince a former customer not to change carriers. The FCC's prohibition ensures that all carriers have the same opportunities to gain customers without undue ILEC interference. The FCC should not reconsider its decision.

## **VI. Conclusion**

The FCC should clarify its rules to allow preferred carrier freezes to be removed upon verification of the consumer's request for removal using any one of the three standard verification procedures. The FCC also should apply its verification measures to consumers' initial carrier selections in addition to carrier changes, thereby promoting uniformity of approaches as well as addressing the potential for ILEC misbehavior. In addition, the FCC should impose standard verification requirements on all ILECs that execute a customer's request to switch to a long distance carrier affiliated with the ILEC. However, the FCC should leave in place its prohibition against the duplicative verification measures that have been used by some

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<sup>25</sup> NTCA, Petition for Reconsideration at 4-17; Rural LECs, Petition for Reconsideration at 3-11. US West supported these petitions. Comments of US West at 12.

<sup>26</sup> Comments of MCI Worldcom at 18-22; Sprint at 2-6; Qwest at 14-15; Cable & Wireless USA, Inc. at 2-5.

incumbent LECs as a means to unduly influence their former customers. Each of these clarifications will promote the uniformity and efficacy of the Commission's slamming rules.

Respectfully submitted,

**TELTRUST, INC.**

A handwritten signature in black ink, appearing to read "Steven P. Goldman", is written over a horizontal line.

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June 6, 1999

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I, Roberta L. Lindsay, do hereby certify that on this 6th day of July, 1999, I caused a copy of the foregoing Reply Comments of Teltrust, Inc. to be served upon each of the parties listed below:

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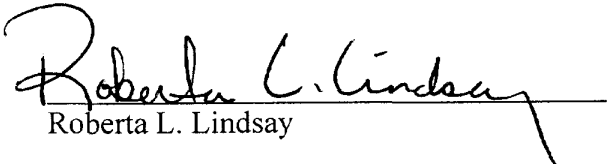
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